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10/536,617

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Danette Vanessa Choi

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1781

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/536,617	<b>Applicant(s)</b> CHOI, DANETTE VANESSA	
	<b>Examiner</b> JYOTI CHAWLA	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/20/2010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/13/2010 has been entered. Claim 16 has been cancelled and pending claims 1-15 and 17-20 are examined in the application.

### ***Information Disclosure Statement***

The information disclosure statement filed 10/20/2010 has been considered.

### ***35 USC 1.132 Declaration***

Declaration by Ing Erhard Under 35 USC 1.132 dated 10/13/2010 has been entered. Mr. Erhard declaration supplements Declaration Under 35 USC 1.132 dated 9/23/2009 by Dr. Christa Wutschitz. Mr. Erhard declaration states that papaya pulp (p) was picked peeled and deseeded, however reference Papaya puree (P) is not cooked. Thus the two products tested (Caricol C, product of the invention) and product (P) are not comparable. Further as pointed in the previous office action that Declaration Under 35 USC 1.132 dated 9/23/2009 by Dr. Christa Wutschitz and accompanied results were not found persuasive because the results of the study (Exhibit A, dated 9/23/2009, of record), compare a composition Caricol (C) to a generic uncooked bottled papaya product (P) (see Exhibit A, pages 1-2, fruit preparation) and the effects of the two

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products in improving the bowel habit of geriatric patients with chronic obstipation (Exhibit A, page 1 study and page 3, conclusion), which is a specific disorder. Further, Currently recited claims are directed to a method of making a papaya puree product and the declaration of Dr. Christa Wutschitz, filed 9/23/2009 is directed to a study addressing a very specific use of a papaya product for a specific disorder (chronic obstipation) for a very specific group of subjects (geriatric patients). Thus, the Declarations, as filed, are not commensurate in scope with the invention as claimed, and as such, fail to overcome the outstanding rejections of claims 1-15 and 17-20.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

(A) Claims 1-3 and 5-7, 15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolff (US 4089985).

Regarding claims 1-3 and 15, Wolff teaches of a method for preparing a papaya preparation comprising cooking the Carica papaya fruits in an aqueous medium

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(Column 2, lines 43-68) wherein the volume of the aqueous medium is at least twice of the water content of the fruits (Column 2, lines (65-68), as claimed. Regarding cooking the papaya Wolff teaches that water added to papaya is at 71°C and during the process the temperature is raised to 91°C-99 °C (Column 3, lines 3 to 5 and 20-25 , Column 4, lines 40-50), which will result in cooking the papaya. Regarding the limitation of cooling the cooked papaya fruits for a period of at least 30 minutes in an oxygen-containing atmosphere Wolff teaches of cooling as recited (Column 3, lines 66-68). Regarding the optional limitation of homogenizing the papaya fruits it is not a positive limitation and is therefore not required in the method of processing papaya as claimed. Regarding papaya product being a puree, Wolff teaches of papaya product wherein water is added to papaya meat in the recited range of the applicant, therefore, Wolff teaches of a papaya puree product as recited in claims 1, and 15.

Regarding the time for cooking and cooling for at least 30 minutes at normal pressure (claim 1) and at least 2 hours (claim 2), Wolff teaches of heating and blending together and also teaches that the time in blender required to raise the temperature and homogenize papaya depends on the type of blender and speed of blending (Column 3, lines 1-20 and Column 4. Wolff also teaches of a minimum of 18 minutes to blend papaya (Column 2, line 13-15). Wolff also teaches of pasteurization and further teaches that minimum time required for pasteurizing at 65°C is 30 minutes. Further, it is noted that processing or cooking and cooling times vary from one food to another and also vary based on the desired temperature of the finished food. It is noted that it was well within the purview of one of ordinary skill in the art at the time of the invention to vary food cooking and processing time based on cooking temperature employed, equipment available, amount of food cooked and desired consistency of finished product.

Therefore, to heat a food product for a specific time (at least for 30 minutes as recited), would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention. One of ordinary skill would have been motivated to adjust the cooking time at least for the purpose of ensuring that the papaya product is cooked to a desired level.

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Similarly regarding the time of cooling, Wolff teaches of cooling but is silent about the time of cooling as recited in claims 1 and 3. Cooling times vary at least based on the initial temperature of the product to be cooled, the amount of the product to be cooled and the cooling conditions, such as stirring or agitation, refrigeration etc., which are routinely determinable by one of ordinary skill in the art. Therefore, to cool a food product for a specific time (at least for 30 minutes as recited), would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention. One of ordinary skill would have been motivated to adjust the cooling time at least based on the initial temperature of cooked papaya product, the type of equipment or container and the method of cooling employed (e.g., stirring or putting in a wide mouth pot will cool a hot product faster than no stirring or a long and narrow pot) and based on the desired final temperature of the cooled product.

Regarding claim 5, Wolff teaches that papaya fruits are peeled and stoned prior to cooking (Column 2, lines 54-60).

Regarding claim 6, Wolff teaches that obtained papaya product is pasteurized (Column 5, lines 1-20).

Regarding claim 7, Wolff teaches of papaya product which is ripe (Column 2, lines 50-65).

Regarding claim 18, Wolff teaches of papaya product where the fruit is blended (Column 3, line 18), which crushes the fruit product as recited.

Regarding the water content of the puree as recited in claims 16 and 19, Wolff teaches that water can be added up to 3 parts of water for one part of papaya meat (Column 2, lines 64-68), before blending and heating. Thus, the amount of water in the papaya product as taught by Wolff can be varied. It is noted that fruit based purees can be made thick or thin by varying the amount of liquids at least based on the intended use.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wolff for the purpose of making the papaya product more or less viscous as desired, by modifying routinely determinable parameters, such as, the amount of water or liquids added, time and temperature of cooking etc. One of ordinary skill would have been motivated to modify Wolff and have the water content of the product in the range of 70-80% (claim 19) at least for the purpose of making the papaya product viscous enough for the intended use as a puree. One would have been further motivated to do so to maintain desirable nutritional and organoleptic characteristics of the papaya product.

Regarding claims 1-3, and 19, further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In *re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In *re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

(B) Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolff (US 4089985) in view of Swensen (US 5840356).

Wolff has been applied to reject claims 1-3, 5-7, 15-16 and 18-19 under 35 U.S.C. 103(a) above.

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Regarding claim 4, Wolff teaches of processing papaya wherein acids, including citric acid is added to papaya (Column 3, lines 5-15), but does not teach the pH of the product. Swensen teaches processing of fruit purees, wherein the fruits include papaya (Swensen, Column 2, lines 18-21). Swensen teaches that acidic pH helps to preserve the fruit purees. Swensen teaches of addition of edible acids, including citric acid in sufficient quantity to maintain a desired pH range of 2.3 to 3.8 (Column 3, lines 10-20), which includes values in applicant's recited range of 3.5 to 5.0. Thus, addition of citric acid to acidify fruit products was known at the time of the invention (Wolff and Swensen). Further, fruit purees having pH in applicant's recited range were known at the time of the invention (Swensen). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wolff and add citric acid in a sufficient amount, such that the pH of the papaya fruit product falls in the desired pH range as taught by Swensen. One of ordinary skill would have been motivated to modify Wolff at least for the purpose of acidifying papaya puree to a pH level where the acid acts as a preservative and also enhances the effect of other preservatives, such as, sodium benzoate and potassium sorbate if present in the fruit composition.

Regarding the addition of citric acid to cooled papaya puree, Wolff also teaches of adding citric acid before blending the papaya product (as Wolff teaches of heating (cooking) and blending steps together) and the applicant teaches adding citric acid to the papaya product after it has been cooled (before blending). It is noted that addition of citric acid is done in such a manner that citric acid can be homogenously mixed in the papaya product. It would have been a matter of routine determination and thus, obvious to one of ordinary skill in the art at the time of the invention to add citric acid to papaya product, at a stage in processing wherein the acid can be dispersed homogenously in the food product. One of ordinary skill would have been motivated to do so in order to obtain a uniform taste and flavor in the papaya product.



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(C) Claim 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolff (US 4089985) in view of the combination of IDS document by Emma Dawson (The medicinal properties of Papaya), hereinafter Dawson, Chandalia et al (Beneficial Effects of High Dietary Fiber Intake in Patients with Type 2 Diabetes) and Katsuki Imao et al. (Free radical scavenging activity of fermented papaya preparation and its effect on lipid peroxide level and superoxide dismutase activity in iron-induced epileptic foci of rats).

Wolff has been applied to reject claims 1-3, 5-7, and 15-16, 18-19 under 35 U.S.C. 103(a) above.

Wolff teaches papaya product as recited in claim 1, but is silent about the method of using papaya product to treat certain disorders. Regarding claims 8-11, Dawson discloses the medicinal properties of papaya, namely the use in dyspepsia and other digestive disorders (claims 8 and 9), rheumatism, an immune system disorder (Claim 10) chronic wounds, burns and ulcers (claim 11), enlarged tonsils as well as the conventional application in the countries of origin in the form of jelly, jam or fruit juice (Dawson, pages 1 and 2). It is also indicated that the enzyme papain present in papaya is not destroyed by heating.

Regarding the method of using papaya product to reduce insulin requirement, as recited in claims 12 and 13, Chandalia et al teach that inclusion of high insoluble fiber in foods including papaya improves glycemic control (Diet section, paragraph 3, after Table 1). The article emphasizes that improved glycemic control and decreases degree of hyperinsulinemia in patients with Type -2 diabetes. Regarding the limitation that papaya product increases vitality (claim 13), applicant's attention is directed Katsuki Imao article, as included in the previous office action, Katsuki Imao teaches of an association between antioxidants present in papaya and their positive effect in treatment of free-radical damage related to aging and related diseases, such as Parkinson's disease (Page 11 , paragraphs 1-3), i.e., anti aging effect of papaya was known at the time of

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the invention. Vitality or increased energy are characteristics of youth, and the anti aging property would also be responsible for an increase in vitality of an individual.

Thus, papaya inherently has properties to treat certain disorders as recited in claims 8-14. Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wolff and specify the benefits of dietary intake of papaya product. One of ordinary skill would have been motivated to modify Wolff at least for the purpose of educating the consumer of the multitude of benefits of consuming prophylactically or therapeutically effective amounts of papaya product.

(D) Claims 17 and 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolff (US 4089985) in view of Nakayama (JP 08056562 A) (English Abstract and machine translation).

Wolff has been applied to reject claims 1-3, 5-7, and 15-16, 16-19 under 35 U.S.C. 103(a) above.

Regarding the sugar content of the puree as recited in claims 17 and 20, Wolff teaches of 4 tablespoons of sugar to 12 ounces of papaya, but the amounts taught by Wolff are approximate (Column 3, lines 3-15). Thus, the amount of sugar in the papaya product as taught by Wolff can be varied. Nakayama teaches of a cooked papaya product containing 25-35% sugar, which falls within applicant's recited range for claims 17 and 20. Further, it is noted that fruits vary in their sweetness from one plant to another, one season to another and the amount of sugar added to the puree can be varied in order to achieve a consistent fruit puree product from one batch to another. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wolff and change the amount of sugar added to the puree based on the teaching of Nakayama, at least for the purpose of making a sweet papaya based product wherein the sweetness and other organoleptic properties are consistently maintained in the desired range in the finished product. One of ordinary skill would have been motivated to modify Wolff and have the sugar content of the product in the recited range at least

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for the purpose of making a papaya product with consistent and desirable nutritional and organoleptic characteristics.

Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In *re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In *re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

### ***Response to Arguments***

Applicant's arguments filed 10/13/2010 have been fully considered but they are not persuasive.

### **Rejection of claims 1-3 and 5-7, 15-16 and 18-19 under 35 USC 103 over Wolff (US 4089985)**

Applicant argues that “Wolff does not disclose or suggest claim 1” (remarks, dated 9/23/09, page 6, third last line). Applicant seems to arrive at this conclusion based on the reasoning that “primary object of Wolff is the production of fruit juice” and “Wolff does not disclose or suggest cooking papaya fruits for at least 30 minutes, or cooling said cooked papaya fruits for a period of at least 30 minutes in an oxygen containing atmosphere” (Remarks, page 6, second last paragraph). Applicant’s arguments are not persuasive.

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1. Wolff discloses of a method of making papaya product comprising the Carica papaya fruits by blending fresh papaya meat in aqueous medium with or without the addition of water (Column 2, lines 13-28). Regarding the volume of the aqueous medium is at least twice of the water content of the fruits (Column 2, lines (65-68). Applicants claim is also recites "A method for preparing a puree preparation from Carica papaya fruits, ... wherein the volume of the aqueous medium is at least twice of the water content of the fruits which includes the limitations as claimed. Thus, Wolff discloses of a papaya puree product as instantly claimed and applicants' argument that "primary object of Wolff is the production of fruit juice" where the product is different has not been found persuasive.

2. In response to the argument about the definition of cooking to mean "cooking at a boiling temperature" (Page 6, last paragraph lines 1-2) and that the claim should be understood in view of the intrinsic evidence (Remarks, page 7, line1, it is noted that applicant's disclosure does not define the term cooking and the disclosure also does not support cooking to mean "cooking at a boiling temperature" as argued by the applicant on Page 6, last paragraph lines 1-2. It is noted that claims and claimed terms in the claim are given its broadest reasonable interpretation (See MPEP 2106 [R-6] II C). In the absence of any definition or clarification of the term cooking in the disclosure the office has interpreted the term "cooking" as per the definition provided in Webster's Dictionary, which defines the verb "cook" as "to prepare food by the action of heat" (Enclosed evidentiary reference, page 214). Based on the general definition of cooking Wolff teaches a process which includes the step of cooking of papaya product as Wolff discloses the following:

- "blending of fresh papaya meat for a minimum period of 18 minutes at a very high speed, the high speed blending first raising the temperature of the papaya meat to about 95 °F with the blender container covered, secondly holding the temperature of the papaya meat at or above 195°F (91°C) for three minutes with the blender container still covered, and finally continuing the high speed blending for a period of

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five minutes with the blender container uncovered.” (Wolff, Column 2, lines 13-28) (Emphasis added).

- ❑ “If water is added to the papaya meat for blending, the bitter and unpleasant taste and smell of heretofore known papaya juice products are removed by separating and discarding foam which forms at the top of the blended product from the remainder of the extract.” (Wolff, Column 2, lines 13-28). Also see Column 4, lines 44-46, where Wolff discloses holding the hot blended papaya product at 91 °C-99 °C for the duration of the process (Emphasis added).

Some of the cooking times recited by Wolfe include at least 18 minutes for heated blending, hot holding for 3 minutes and hot blending for additional 5 minutes (Column 2, lines 13-28), which is about 26 minutes. Wolff further teaches of pasteurizing temperatures varying between 1 minute to 30 minutes and more (Column 5, lines 1-10). Wolff also discloses of the variable nature of cooking temperatures and times (Column 2-Column 5). Furthermore, it is noted that cooking time and cooking temperature typically have an inverse relationship, i.e., within safe cooking temperature ranges, the time required to heat or cook a product is inversely proportional to the cooking temperature applied. Wolf recognizes the inverse relationship between time and temperature and discloses it in Column 5, in relation to pasteurizing times and temperatures (Column 5, lines 1-10). It is noted that that the time of heated blending, as disclosed by Wolff can be changed based at least on the factors, such as,

- ❑ Initial temperature of papaya used, such as, fresh papaya, frozen or thawed papaya meat ( Column 2, lines 63-66)
- ❑ temperature of water used “The water can be at room temperature, but in the preferred and tested process, the water at the time of adding it to the papaya meat has been heated to a temperature of approximately 160°F (71°C). This will shorten the blending time (Column 3, lines 1-5, and 20-25, Column 4, lines 40-50, Emphasis added),
- ❑ speed of blending, and

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- ☐ whether the product is cooked or blended with the lid closed or open
- ☐ the amount of product being cooked, and
- ☐ the capacity or power of the heating equipment employed.

Also see Wolff's disclosure (Column 2, lines 13-28, Column 2, lines 43 to Column 3, line 5 Column 4, lines 30-50 and Column 5, lines 1-26), where Wolff discloses of pasteurization and further teaches that minimum time required for pasteurizing at 65°C is 30 minutes. Thus, Wolff teaches of application of heat in making the papaya product, i.e., cooking and it was known to one of ordinary skill in the art at the time of the invention that processing or cooking times vary from one food to another and for the same food based at least on the factors discussed above. It was well within the purview of one of ordinary skill in the art at the time of the invention to vary food cooking and processing time at least based on cooking temperature employed, equipment available to cook the product, amount or batch size of food cooked and desired doneness or consistency of finished product. Therefore, to heat a food product for a specific time (at least for 30 minutes), would have been obvious to one of ordinary skill in the art at the time of the invention. One of ordinary skill would have been motivated to adjust the cooking time based on the other process conditions (as discussed above); at least for the purpose of ensuring that the papaya product is cooked to a desired level. Thus, applicant's argument that invention as claimed is unobvious over Wolff is not persuasive.

Therefore, applicant's arguments that Wolff does not teach the invention as claimed and does not disclose or suggest cooking papaya fruits for at least 30 minutes (Remarks, page 7, paragraphs 2 to 5) and "to extend such a period of time to at least 30 minutes is not obvious" (Remarks, page 6-7), it is noted that the applicant has not defined any cooking conditions (i.e., temperature range, equipment type, batch size being cooked, etc.) in the recited claims. Further it is noted that claims are being rejected in an obviousness type rejection over Wolff. Applicant's arguments are based on the

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definition of cooking to mean only "cooking at a boiling temperature" (Page 6, last paragraph) and nothing else wherein neither the claims nor the original disclosure supports applicant's assumed definition. Thus applicant's arguments are not persuasive.

3. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Page 8, lines 3-12), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case applicant's attention is directed to the response in section 2 above, where it is clearly discussed that varying temperature and time of cooking in order to cook the food to a desired extent was well known in the art at the time of the invention, as disclosed by Wolff. Further, attention is invited to the term "cooking" and its broadest reasonable interpretation (Webster Dictionary) in light of specification, as discussed above. Thus, the rejection of claim 1 over Wolff takes into account the knowledge that was available to one of ordinary skill and applicant's argument of improper hindsight is not persuasive.

4. Further in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., cooking should be understood as "cooking at a boiling condition" Remarks, page 6, last paragraph) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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5. Applicant's argument that cooking of Wolf is similar to Dr. Wutshitz's comparative sample and the cooking method of the claimed invention provides unexpected result over the comparative sample as discussed in the declaration of Dr Wutschitz (Remarks, page 7, last 7 lines). In response, applicant is reminded that currently recited claims are directed to a method of making a papaya puree product and as disclosed and claimed the term cooking is not limited to "cooking at boiling temperature" and that the declaration of Dr. Christa Wutschitz, filed 9/23/2009 is directed to a study addressing a very specific use of a papaya product for a very specific disorder (chronic obstipation) for a very specific group of subjects (geriatric patients). Thus, the Declaration, as filed, is not commensurate in scope with the invention as claimed, and as such, fails to overcome the outstanding rejections of claims 1-15 and 17-20.

**Rejections of claims under 35 USC 103 over Wolff in view of Swensen OR Dawson, Chandalia and Imao.**

Applicants' remarks regarding rejections of claim 4 over Wolff in view of Swensen (Page 8, Paragraph marked (B)), claim 8-14 over Wolff in view of Dawson, Chandalia and Imao (Page 8, Paragraph marked (C)), and claims 17-20 over Wolff in view of Nakayama (Page 9, Paragraph marked (D)) have been considered but they are the same and addressed to Wolff not teaching the invention as recited in claim 1. The remarks regarding Wolff have been addressed above in answers 1-4 of rejection under 35 USC 103 over Wolff.

Further in response to applicant's argument that treating digestive disorder using a papaya puree prepared by the process of claim 1 has an unexpected result which is not obvious (Page 8, last 2 lines), applicant is reminded that, the unexpected results shown declaration of Dr. Christa Wutschitz, filed 9/23/2009 is directed to a study addressing a very specific use of a papaya product for a very specific disorder (chronic obstipation) for a very specific group of subjects (geriatric patients), wherein currently recited independent claim 1 is directed to a method of making a papaya puree product and as



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disclosed and claimed the term cooking is not limited to "cooking at boiling temperature" and, for example, dependent claim 8 is directed to treating generic digestive disorders with no specific population or sample when a papaya product is administered in prophylactically and therapeutically effective amount for undisclosed amount of time. The declaration of Dr. Christa Wutschitz, filed 9/23/2009 is directed to a study addressing a very specific use of a papaya product for a very specific digestive disorder (chronic obstipation) for a very specific group of subjects (geriatric patients). Thus, the Declaration, as filed, is not commensurate in scope with the invention as claimed, and as such, fails to overcome the outstanding rejections of claims 1-15 and 17-20.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jyoti Chawla/  
Examiner, Art Unit 1781